

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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	)	
In Re: PHARMACEUTICAL INDUSTRY	)	MDL No. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	Master File No. 01-CV-12257-PBS
	)	
-----	x	Judge Patti B. Saris
	)	
This Document Relates to:	)	Chief Mag. Judge Marianne B. Bowler
01-CV-12257-PBS	)	
	)	
-----	x	

**DECLARATION OF ADEEL A. MANGI**

Adeel A. Mangi, declares and says:

1. I am associated with the firm of Patterson, Belknap, Webb & Tyler LLP, which serves as counsel to Johnson & Johnson, Centocor, Inc., Ortho Biotech Products L.P., McNeil-PPC, Inc., Janssen Pharmaceutica Products L.P., Johnson & Johnson Health Care Systems, Inc., Ortho McNeil Pharmaceuticals Inc., and Ortho Neutrogena in connection with the above captioned litigation. I submit this declaration, which is based on my personal knowledge, in support of Defendants' Opposition to Plaintiffs' Emergency Motion for a Protective Order seeking to impose certain scheduling limits on third party depositions.

2. I have been directly involved on behalf of defendants in the discussions with the third party payors that have been subpoenaed by defendants for documents and deposition testimony.

3. Although the majority of defendants' third party subpoenas were served in November 2003, all of the third party payors who were subpoenaed refused to produce documents in response to those subpoenas until the Court decided plaintiffs' Motion for a Protective Order. These entities also generally refused to engage in any discussions with defendants' counsel regarding the scope of their productions during this time period.

4. Defendants promptly initiated discussions with these third party payors regarding the scope of their productions as soon as plaintiffs' motion was denied in March 2004. Nonetheless, productions did not begin until May or June 2004. Accordingly, defendants could not even begin to schedule depositions of these third party payors until this summer and did so promptly after receiving document productions.

5. I have been informed by other defense counsel that delays of a similar duration also occurred in obtaining productions from other important third parties, such as PBMs and pharmaceutical benefit consultants used by many third party payors.

6. To date defendants have scheduled depositions with only a fraction of the subpoenaed third parties. In each case, the depositions have been scheduled in order to accommodate the needs of the third party witnesses, within a timeframe that will allow defendants to use the discovery in opposition to plaintiffs' motion for class certification.

7. Given the need to accommodate third party schedules, depositions are sometimes scheduled or cancelled on relatively short notice. Defendants have made every effort to keep plaintiffs' counsel apprised of these scheduling changes. Defendants began by promptly posting to Verilaw correspondence confirming firm deposition dates.

Defendants then agreed to exchange a calendar of third party depositions with plaintiffs on at least a weekly basis, and often more frequently as scheduling changes arise.

8. I declare under penalty of perjury that the foregoing is true and correct.

By:   
Adeel A. Mangi

Dated: September 20, 2004

## **EXHIBIT C**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO ALL  
ACTIONS

Chief Mag. Judge Marianne B. Bowler

**PLAINTIFFS' CONSENT MOTION FOR AN EXTENSION OF TIME TO  
OPPOSE ASTRAZENECA'S MOTION FOR A PROTECTIVE ORDER LIMITING  
THE SCOPE OF CERTAIN THIRD PARTY SUBPOENAS**

Plaintiffs hereby move, with the consent of AstraZeneca, for a three day extension of time until September 17, 2004, to oppose the Motion for a Protective Order Limiting the Scope of Certain Third Party Subpoenas. The parties have been discussing potential resolutions to this dispute. No further extensions of time are anticipated.

Accordingly, Plaintiffs move for the entry of the proposed scheduling order attached hereto.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certify that counsel for AstraZeneca consents to this motion.

Dated: September 14, 2004

By: /s/Edward Notargiacomo

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**ADDITIONAL ATTORNEYS  
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**CERTIFICATE OF SERVICE BY VERILAW**

Docket No. MDL 1456

I, Edward Notargiacomo, hereby certify that I am one of plaintiffs' attorneys and that, on September 14, 2004, I caused copies of PLAINTIFFS' CONSENT MOTION FOR AN EXTENSION OF TIME TO OPPOSE ASTRAZENECA'S MOTION FOR A PROTECTIVE ORDER LIMITING THE SCOPE OF CERTAIN THIRD PARTY SUBPOENAS to be served on all counsel of record by causing same to be posted electronically via Verilaw.

Dated: September 14, 2004

/s/ Edward Notargiacomo  
Edward Notargiacomo



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )  
\_\_\_\_\_ )

MDL No. 1456

CIVIL ACTION:

Judge Patti B. Saris

Chief Mag. Judge Marianne B. Bowler

**[PROPOSED] SCHEDULING ORDER**

IT IS HEREBY ORDERED that Plaintiffs shall be granted a three day extension until September 17, 2004, to file any opposition to AstraZeneca's Motion for a Protective Order Limiting the Scope of Certain Third Party Subpoenas.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Marianne B. Bowler  
United States Magistrate Judge

## **EXHIBIT D**

Russell Hailey

Nashville, TN

August 4, 2004

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL ) MDL DOCKET NO.  
INDUSTRY AVERAGE WHOLESALER ) CIVIL ACTION NO.  
PRICE LITIGATION, ) 01CV12257-PBS

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Deposition of:  
J. RUSSELL HAILEY  
Taken on behalf of the Defendants  
August 4, 2004

J. Russell Hailey

August 4, 2004

Nashville, TN

23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 Q. State it a different way. These</p> <p>2 programs all centralized the</p> <p>3 decision-making process from which drugs</p> <p>4 are prescribed or dispensed would be of</p> <p>5 plan. Is that correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. Let's turn back to Exhibit B</p> <p>8 which is Bates stamped CVH 289. Mr.</p> <p>9 Hailey, generally speaking, what does this</p> <p>10 exhibit show?</p> <p>11 A. Fee schedule.</p> <p>12 Q. And what is a fee schedule?</p> <p>13 A. Well, in return for the services</p> <p>14 outlined in the agreement, a reimbursement</p> <p>15 will be made as follows for these services.</p> <p>16 Q. Were these administrative fees and</p> <p>17 reimbursement rates set forth in this fee</p> <p>18 schedule actually implemented?</p> <p>19 A. Yes.</p> <p>20 Q. Under the section 2 -- well,</p> <p>21 withdraw that question.</p> <p>22 Is it correct that section 2 of</p>	<p style="text-align: right;">88</p> <p>1 dispensed to the Coventry members?</p> <p>2 A. We would -- we assume there was</p> <p>3 margin.</p> <p>4 Q. Your assumption was at the time</p> <p>5 that the reimbursement rate that you paid</p> <p>6 to ESI exceeded the cost at which the</p> <p>7 pharmacies acquired the drug. Correct?</p> <p>8 A. Say that again now.</p> <p>9 Q. Is it correct that your</p> <p>10 understanding at the time was the amount of</p> <p>11 reimbursement that you provided to ESI</p> <p>12 exceeded the amounts that it cost the</p> <p>13 pharmacy for the drugs that were being</p> <p>14 reimbursed?</p> <p>15 A. The -- we were paying enough money,</p> <p>16 to answer the question, where no one was</p> <p>17 losing money. That was the assumption.</p> <p>18 Q. In other words, given the rates</p> <p>19 that you utilized --</p> <p>20 A. Correct.</p> <p>21 Q. -- it was your understanding that</p> <p>22 the pharmacies were acquiring the drugs at</p>
<p style="text-align: right;">87</p> <p>1 this fee schedule specifies the rate at</p> <p>2 which Coventry will reimburse Express</p> <p>3 Scripts for drugs that are dispensed from</p> <p>4 the pharmacies with which Express Scripts</p> <p>5 have contracted?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And in that section the</p> <p>8 agreement provides that Coventry shall</p> <p>9 reimburse ESI for drugs dispensed from ESI</p> <p>10 pharmacies at the lesser of AWP minus 12</p> <p>11 percent or AWP minus 13 percent plus a</p> <p>12 dispensing fee --</p> <p>13 A. It's as --</p> <p>14 Q. -- for --</p> <p>15 A. It's as stated in the contract</p> <p>16 here, these are the terms.</p> <p>17 Q. Right. My question is in setting</p> <p>18 the reimbursement amount to ESI at AWP</p> <p>19 minus 12 percent or AWP minus 13 percent,</p> <p>20 was it Coventry's understanding at the time</p> <p>21 that it was providing some margin to ESI or</p> <p>22 the pharmacies with respect to the drugs</p>	<p style="text-align: right;">89</p> <p>1 something, at a price less than AWP minus</p> <p>2 12 percent or AWP minus 13 percent?</p> <p>3 A. That's our assumption, yes.</p> <p>4 Q. Now turning back to the actual</p> <p>5 terms of the provision, it states there</p> <p>6 that the amount reimbursed shall be the</p> <p>7 lesser of series of numbers including the</p> <p>8 discount off the AWP, the maximum</p> <p>9 reimbursable amount, and, quote, the</p> <p>10 pharmacy's usual and customary price</p> <p>11 charged to a retail customer, end quote.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Why did the reimbursement formula</p> <p>14 include a limitation as to the usual and</p> <p>15 customary price charged to the retail</p> <p>16 pharmacy?</p> <p>17 A. Well, again, we're being</p> <p>18 comprehensive with this definition. As an</p> <p>19 example, if a brand drug, formulary brand</p> <p>20 drug is written, and let's just use this</p> <p>21 number, and the member pays a \$20 copay,</p> <p>22 then if a branded drug on the formulary, if</p>

J. Russell Hailey

August 4, 2004

Nashville, TN

34 (Pages 130 to 133)

<p style="text-align: right;">130</p> <p>1 Coventry Health Care. Is it accurate that</p> <p>2 that is your signature on behalf of</p> <p>3 Coventry Health Care?</p> <p>4 A. Yes.</p> <p>5 Q. Mr. Hailey, what was the impetus</p> <p>6 for this agreement?</p> <p>7 A. Twofold. One is we wanted to get</p> <p>8 better terms with the agreement, and</p> <p>9 Caremark wanted an extension of the</p> <p>10 contract beyond the original terms of the</p> <p>11 first agreement.</p> <p>12 Q. When you refer to better terms,</p> <p>13 what are you referring to?</p> <p>14 A. Well, we think we got better mail</p> <p>15 order rates in this agreement than we had</p> <p>16 in the previous agreement.</p> <p>17 Q. Where are the improved mail order</p> <p>18 rates reflected in this amendment?</p> <p>19 A. Well, if you go to page 3, 8.5, we</p> <p>20 were able for brand prescriptions through</p> <p>21 the mail to be at AWP minus 21 percent</p> <p>22 versus AWP minus 20 percent. If you go to</p>	<p style="text-align: right;">132</p> <p>1 time that in reimbursing Caremark at AWP</p> <p>2 minus 21 percent for brand name drugs, you</p> <p>3 nevertheless were providing Caremark or its</p> <p>4 pharmacies some margin on those drugs?</p> <p>5 A. My assumption would be there would</p> <p>6 be some margin, yes.</p> <p>7 Q. With respect to section 8 of this</p> <p>8 agreement, is it correct that this section</p> <p>9 provides for more particularization with</p> <p>10 respect to the manner in which Coventry</p> <p>11 shall reimburse Caremark for the generics</p> <p>12 distributed?</p> <p>13 A. Yes.</p> <p>14 Q. And under these provisions, is it</p> <p>15 correct that the amount of reimbursement</p> <p>16 that Coventry is agreeing to provide to</p> <p>17 Caremark depends in part on whether or not</p> <p>18 the generic product was listed on the MAC</p> <p>19 schedule as of June 15th, 2002?</p> <p>20 A. It's as we've got it stated in the</p> <p>21 contract.</p> <p>22 Q. Without reiterating all the terms</p>
<p style="text-align: right;">131</p> <p>1 page 2, again, we were defining the MAC</p> <p>2 through the mail going from AWP minus 55</p> <p>3 percent to a guaranteed average of AWP</p> <p>4 minus 64 percent.</p> <p>5 Q. With respect to section 8.5, which</p> <p>6 you said pertains to the mail order —</p> <p>7 A. Can I add something?</p> <p>8 Q. Sure.</p> <p>9 A. The other thing we did is we put</p> <p>10 some more performance parameters in the</p> <p>11 contract to guarantee implementation of new</p> <p>12 acquisitions that we did not have in the</p> <p>13 original agreement. Okay, I'm sorry. Go</p> <p>14 ahead.</p> <p>15 Q. With respect to section 8.5, which</p> <p>16 as I understand you to say, that for brand</p> <p>17 name drugs dispensed through the mail order</p> <p>18 pharmacy, this section provides that those</p> <p>19 brand name drugs shall be reimbursed at AWP</p> <p>20 minus 21 percent?</p> <p>21 A. Correct.</p> <p>22 Q. Was it your understanding at the</p>	<p style="text-align: right;">133</p> <p>1 of the contract, is it fair to say that</p> <p>2 this revision made it more complex, made</p> <p>3 the reimbursement of generics by Coventry</p> <p>4 to Caremark a more complex analysis?</p> <p>5 A. Yes.</p> <p>6 Q. How would one determine today how</p> <p>7 much any particular generic drug was</p> <p>8 reimbursed by Coventry at any particular</p> <p>9 point in time?</p> <p>10 A. Look at the claims payment history.</p> <p>11 Q. Aside from looking at the claims</p> <p>12 payment history, is there any other way to</p> <p>13 determine the reimbursement methodology or</p> <p>14 rate at which Coventry reimbursed Caremark</p> <p>15 for generics under this agreement?</p> <p>16 A. I guess I'm not, I'm sorry, I'm</p> <p>17 just not clear on the question.</p> <p>18 Q. It's not a complicated question,</p> <p>19 it's as simple as you can get it.</p> <p>20 A. Okay.</p> <p>21 Q. Other than looking at the claims</p> <p>22 data, is there any other way of determining</p>



J. Russell Hailey

August 4, 2004

Nashville, TN

41 (Pages 158 to 161)

<p>158</p> <p>1 it is, that is the average wholesale price</p> <p>2 of a particular drug.</p> <p>3 Q. What I'm trying to explore is what</p> <p>4 that means and what it means to Coventry.</p> <p>5 Now, let's walk through this. Coventry</p> <p>6 reimburses pharmacies at an amount less</p> <p>7 than AWP. Is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And in doing so Coventry</p> <p>10 understands and believes that the</p> <p>11 pharmacies are making some margin on the</p> <p>12 drugs that they dispense. Is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. So therefore in providing</p> <p>15 reimbursement that is less than AWP, is it</p> <p>16 not accurate that Coventry understands that</p> <p>17 average wholesale price is not an average</p> <p>18 of what the pharmacies are actually paying</p> <p>19 for the drugs?</p> <p>20 MR. MACORETTA: Objection.</p> <p>21 THE WITNESS: Since we pay an AWP</p> <p>22 minus a percent discount, my assumption is</p>	<p>160</p> <p>1 Q. To your knowledge, has any pharmacy</p> <p>2 conspired with any manufacturer to inflate</p> <p>3 a drug's AWP?</p> <p>4 MR. MACORETTA: Objection.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. HAAS:</p> <p>7 Q. To your knowledge, has any doctor</p> <p>8 conspired with any drug manufacturer to --</p> <p>9 withdraw that question.</p> <p>10 To your knowledge, has any doctor</p> <p>11 conspired with any drug manufacturer to</p> <p>12 inflate any drug's AWP?</p> <p>13 A. No.</p> <p>14 MR. MACORETTA: Objection.</p> <p>15 BY MR. HAAS:</p> <p>16 Q. To your knowledge, has any PBM</p> <p>17 conspired with any drug manufacturer to</p> <p>18 inflate a drug's AWP?</p> <p>19 MR. MACORETTA: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. HAAS:</p> <p>22 Q. Have you seen the complaint that</p>
<p>159</p> <p>1 is that that's not the price, the quoted</p> <p>2 AWP is not the price they're paying.</p> <p>3 BY MR. HAAS:</p> <p>4 Q. All right.</p> <p>5 A. My assumption is, not knowing</p> <p>6 factually, but my assumption is that they</p> <p>7 pay some percent close to, it may be above</p> <p>8 WAC or it could be close to WAC, I'm not</p> <p>9 sure.</p> <p>10 Q. But your assumption is somewhere --</p> <p>11 the amount that pharmacies are paying for</p> <p>12 drugs is somewhere around the wholesale</p> <p>13 acquisition cost?</p> <p>14 A. It's somewhere around that number.</p> <p>15 MR. MACORETTA: Objection.</p> <p>16 THE WITNESS: But I don't know that</p> <p>17 factually.</p> <p>18 BY MR. HAAS:</p> <p>19 Q. Has Coventry ever actually</p> <p>20 conducted any studies of the cost at which</p> <p>21 doctors or pharmacies acquire drugs?</p> <p>22 A. No.</p>	<p>161</p> <p>1 has been filed in this action?</p> <p>2 A. No.</p> <p>3 Q. Do you understand that the</p> <p>4 plaintiffs in this action are contending</p> <p>5 that the publication of AWP's have defrauded</p> <p>6 payers that paid based upon AWP?</p> <p>7 MR. MACORETTA: Objection.</p> <p>8 THE WITNESS: Time out.</p> <p>9 MR. HAAS: Off the record.</p> <p>10 (Break taken.)</p> <p>11 MR. HAAS: Back on the record. Was</p> <p>12 there a question pending?</p> <p>13 (Requested material read.)</p> <p>14 THE WITNESS: No, I don't.</p> <p>15 BY MR. HAAS:</p> <p>16 Q. Is it your position that drug</p> <p>17 manufacturers have perpetuated a fraud on</p> <p>18 Coventry by publishing AWP's?</p> <p>19 MR. MACORETTA: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 MR. HAAS: I have one more pile of</p> <p>22 documents I just need you to authenticate.</p>

# **EXHIBIT E**

Dale Kramer

July 23, 2004

Oakland, CA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-oOo-

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE ) MDL No. 1456  
WHOLESALE PRICE )  
LITIGATION ) No.  
----- ) 01-CV-12257-PBS  
This Document Relates to )  
All Actions )  
Defendant. )

FRIDAY, JULY 23, 2004

DEPOSITION OF DALE KRAMER

Deposition of DALE KRAMER, taken on behalf of  
Plaintiffs, at One Kaiser Plaza, Oakland, California,  
commencing at 1:09 p.m. on FRIDAY, July 23, 2004,  
before LESIA J. MERVIN, CSR No. 4753, RMR, Certified  
Realtime Reporter.

Dale Kramer

July 23, 2004

Oakland, CA

10 (Pages 34 to 37)

<p>1 called.</p> <p>2 Q. Benefits department. Who's the head of</p> <p>3 that department?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you have an understanding,</p> <p>6 Mr. Kramer, as to whether or not Kaiser reimburses</p> <p>7 MedImpact for the amount paid to the pharmacies under</p> <p>8 the point of service plan at the amount paid -- at the</p> <p>9 same amount that MedImpact pays the pharmacy?</p> <p>10 A. I don't know that MedImpact pays the</p> <p>11 pharmacies. I think they just adjudicate and manage</p> <p>12 the claim and Kaiser pays directly.</p> <p>13 Q. So to your understanding it's a complete</p> <p>14 pass-through relationship?</p> <p>15 A. That's my understanding.</p> <p>16 Q. Do you have an understanding as to the</p> <p>17 methodology by which the pharmacies charge Kaiser for</p> <p>18 the drugs dispensed to its members under the point of</p> <p>19 service plan?</p> <p>20 A. Yeah, I believe it's based on AWP.</p> <p>21 Q. Do you have an understanding of whether</p> <p>22 Kaiser has any contractual relationship with the</p>	<p>34</p> <p>1 Which department at Kaiser would be</p> <p>2 responsible for developing MAC lists for the point of</p> <p>3 service plan? Would that be the benefits department</p> <p>4 also?</p> <p>5 A. Pharmacy Benefits Department.</p> <p>6 Q. Is the Pharmacy Benefits Department</p> <p>7 distinct from the Benefits Department?</p> <p>8 A. Yes.</p> <p>9 Q. Is it a separate department or is it a</p> <p>10 subdepartment of that?</p> <p>11 A. Separate department.</p> <p>12 Q. To your knowledge, for the drugs that</p> <p>13 are dispensed -- withdraw that question. To your</p> <p>14 knowledge, with respect to the drugs that are</p> <p>15 administered to Kaiser members in doctors' offices</p> <p>16 under the point of service plan, is it your</p> <p>17 understanding that those drugs are reimbursed at some</p> <p>18 amount based on AWP?</p> <p>19 A. I don't have any knowledge of how the</p> <p>20 medical care arrangement works.</p> <p>21 Q. With respect to the reimbursement of</p> <p>22 pharmaceuticals under the point of service plan at some</p>
<p>35</p> <p>1 pharmacies -- withdraw that. Withdraw that question.</p> <p>2 Do you have an understanding whether or</p> <p>3 not MedImpact has a contractual relationship with the</p> <p>4 pharmacies that participate in the point of service</p> <p>5 program?</p> <p>6 A. I don't know the details, so I couldn't</p> <p>7 say with certainty.</p> <p>8 Q. With respect to the reimbursement that</p> <p>9 Kaiser has in fact paid to pharmacies under the point</p> <p>10 of service plan, do you have any understanding as to</p> <p>11 the range of discounts off of AWP that Kaiser has paid</p> <p>12 to reimburse for branded drugs dispensed to its</p> <p>13 members?</p> <p>14 A. I don't know the terms of the agreement.</p> <p>15 Q. Do you have an understanding as to</p> <p>16 whether Kaiser itself, or MedImpact on behalf of</p> <p>17 Kaiser, has developed MAC lists to govern the</p> <p>18 reimbursement of generic drugs under the point of</p> <p>19 service plan?</p> <p>20 A. I don't know for sure, but I would</p> <p>21 assume so.</p> <p>22 Q. Who would -- withdraw that question.</p>	<p>37</p> <p>1 rates based upon AWP, is it your understanding of</p> <p>2 Kaiser's understanding that Kaiser understood AWP in</p> <p>3 that context to be a benchmark set at some fixed amount</p> <p>4 above WAC?</p> <p>5 MR. RHOAD: Objection to form.</p> <p>6 THE WITNESS: Yes, I -- well, I believe that</p> <p>7 Kaiser's understanding of AWP in this instance is the</p> <p>8 same as my own, that it's a benchmark with a spread</p> <p>9 above the actual cost.</p> <p>10 BY MR. HAAS:</p> <p>11 Q. And even though Kaiser -- now I'm on</p> <p>12 Kaiser's knowledge or understanding of this question.</p> <p>13 Even though Kaiser's reimbursing the pharmacies at some</p> <p>14 discount between five and 15 percent off of AWP, is it</p> <p>15 Kaiser's understanding, nevertheless, that it is</p> <p>16 affording some margin to the pharmacies for the drugs</p> <p>17 dispensed to its members?</p> <p>18 MR. RHOAD: Eric, to be clear, you're</p> <p>19 referring to the point of service business?</p> <p>20 MR. HAAS: Yes, referring now solely to the</p> <p>21 point of service plan.</p> <p>22 THE WITNESS: Yes, we believe there is a</p>

Dale Kramer

July 23, 2004

Oakland, CA

11 (Pages 38 to 41)

<p>38</p> <p>1 margin.</p> <p>2 BY MR. HAAS:</p> <p>3 Q. Do you have any understanding in</p> <p>4 reimbursing pharmacies for drugs dispensed to Kaiser's</p> <p>5 members as to the amount of margin that the pharmacies</p> <p>6 are earning on those drug sales?</p> <p>7 A. Yeah, it would be the difference between</p> <p>8 the 20 to 25 percent, say, average 22 and a half</p> <p>9 percent and whatever discount off WAC has been</p> <p>10 negotiated.</p> <p>11 Q. Aside from the point of service plan, is</p> <p>12 there any other plan that Kaiser offers that utilizes</p> <p>13 AWP in determining or setting any amount of</p> <p>14 reimbursement, either to providers or to pharmacies?</p> <p>15 A. No other plan that uses AWP.</p> <p>16 Q. Is a point of service plan offered only</p> <p>17 in particular geographic areas, or is it offered</p> <p>18 throughout the geographic area that Kaiser operates?</p> <p>19 A. Only within geographic areas where</p> <p>20 Kaiser operates.</p> <p>21 Q. Is it correct that Kaiser operates now</p> <p>22 in nine states?</p>	<p>40</p> <p>1 Q. Does Kaiser have any interaction or does</p> <p>2 Kaiser do any business with unions?</p> <p>3 A. Yes.</p> <p>4 Q. Which unions?</p> <p>5 A. Probably a large number. I can't tell</p> <p>6 you. I know retail clerks in Northern and Southern</p> <p>7 California are our major customers.</p> <p>8 Q. Mr. Kramer, have you had the opportunity</p> <p>9 to review the Complaint that has been filed in this</p> <p>10 action?</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with the named</p> <p>13 plaintiffs in this action?</p> <p>14 A. Yes.</p> <p>15 Q. Are any of the named plaintiffs or have</p> <p>16 at any point in time any of the named plaintiffs been</p> <p>17 customers or clients of Kaiser?</p> <p>18 A. I don't know.</p> <p>19 Q. How does one go about determining that?</p> <p>20 A. We would have to check with, I guess,</p> <p>21 our benefits department.</p> <p>22 Q. Who are Kaiser's major competitors?</p>
<p>39</p> <p>1 A. I believe so.</p> <p>2 Q. Setting aside individuals and employers,</p> <p>3 by that I mean corporate employer groups, who are</p> <p>4 Kaiser's customers or clients?</p> <p>5 MR. RHOAD: Objection to the form.</p> <p>6 THE WITNESS: Well, our biggest customers are</p> <p>7 the federal government and CalPERS, and after that the</p> <p>8 University of California, and after that a variety of</p> <p>9 major corporations, people like IBM, General Motors,</p> <p>10 etc.</p> <p>11 BY MR. HAAS:</p> <p>12 Q. Does Kaiser represent any union benefit</p> <p>13 funds?</p> <p>14 MR. RHOAD: Did you say union benefit funds?</p> <p>15 BY MR. HAAS:</p> <p>16 Q. Yes.</p> <p>17 A. I don't know what that means.</p> <p>18 Q. Okay. Does Kaiser represent any funds</p> <p>19 that -- withdraw that question.</p> <p>20 Let me ask it this way: Is it -- are</p> <p>21 you unfamiliar with the term "union benefit fund"?</p> <p>22 A. Yes.</p>	<p>41</p> <p>1 A. Everybody in the healthcare provider</p> <p>2 business.</p> <p>3 Q. Does Kaiser compete with indemnity</p> <p>4 insurance plans?</p> <p>5 A. Yes.</p> <p>6 Q. Does Kaiser complete with PPO plans?</p> <p>7 A. Yes.</p> <p>8 Q. As a matter of course, when Kaiser is</p> <p>9 competing for a client, does Kaiser engage in a request</p> <p>10 for proposal process whereby Kaiser submits responses</p> <p>11 to requests issued by the potential clients?</p> <p>12 A. I know that happens with some clients.</p> <p>13 Q. Would you say that's the typical process</p> <p>14 by which customers, clients, select a health plan</p> <p>15 administered benefits to its members?</p> <p>16 MR. RHOAD: Eric, this is Robert Rhoad.</p> <p>17 Obviously I want to give you some latitude here, but</p> <p>18 this seems to be venturing off the -- or outside of the</p> <p>19 scope of the deposition, as identified in your letter</p> <p>20 of July 14, where it lists out five items as being</p> <p>21 within the scope of the deposition.</p> <p>22 MR. HAAS: I appreciate your latitude,</p>